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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,386	03/21/2001	Matthew P.J. Baker	GB 000038	3869

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EXAMINER	
LELE, TANMAY S	
ART UNIT	**PAPER NUMBER**
2684	5

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/814,386	BAKER ET AL.	
	Examiner	Art Unit	
	Tanmay S Lele	2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 March 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 March 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3,4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3, 9, and 13 are rejected under the judicially created doctrine of double patenting over claims 1, 2, 3, 8, of U. S. Patent No. 6,611,690 and claims 1, 2, 4 and 6 of US Patent 6,556,838, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Regarding claim 1, the present invention is of a radio communication system having a communication channel between a primary station and a secondary station for transmission of information from one of the primary and secondary stations (the transmitting station) to the other station (the receiving station) (as seen in claims 1 – 3 and 8 of US Patent 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838), wherein the transmitting station has means for adjusting its output power at a plurality of different rates (as seen in claims 1 – 3 and 8 of US Patent No.

6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838; note Applicant's definition of "different rates" as detailed in the specification of the present application, specifically page 3 lines 16 – 20), the receiving station has means for determining, from measurements of characteristics of signals received from the transmitting station, an appropriate rate of adjustment of the output power of the transmitting station and means for communicating said rate of adjustment to the transmitting station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838; note Applicant's definition of "rate of adjustment" as detailed in the specification of the present application, specifically page 3 lines 16 – 20), and the transmitting station has means responsive to communications from the receiving station for setting the adjustment rate of its output power (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838).

Regarding claim 3, the present invention is of a primary station for use in a radio communication system having a communication channel between the primary station and a secondary station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838), wherein means are provided for determining, from measurements of characteristics of signals received from the secondary station, an appropriate rate of adjustment of the output power of the secondary station, selected from one of a plurality of rates of adjustment available to the secondary station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838; note Applicant's definition of "rate of adjustment" as detailed in the specification of the present application, specifically page 3 lines 16 – 20), and for communicating said rate of adjustment to the secondary station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838; note

Applicant's definition of "rate of adjustment" as detailed in the specification of the present application, specifically page 3 lines 16 – 20).

Regarding claim 9, the present invention is of a secondary station for use in a radio communication system having a communication channel between the secondary station and a primary station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838), wherein means are provided for determining, from measurements of characteristics of signals received from the primary station, an appropriate rate of adjustment of the output power of the primary station, selected from one of a plurality of rates of adjustment available to the primary station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838; note Applicant's definition of "rate of adjustment" as detailed in the specification of the present application, specifically page 3 lines 16 – 20), and for communicating said rate of adjustment to the primary station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838).

Regarding claim 13, the present invention is of a method of operating a radio communication system having a communication channel between a primary station and a secondary station for transmission of information from one of the primary and secondary stations (the transmitting station) to the other station (the receiving station) (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838), the method comprising the receiving station determining, from measurements of characteristics of signals received from the transmitting station, an appropriate rate of adjustment of the output power of the transmitting station, selected from one of a plurality of rates of adjustment available to the transmitting station (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4,

and 6 of US Patent 6,556,838; note Applicant's definition of "rate of adjustment" as detailed in the specification of the present application, specifically page 3 lines 16 – 20), and communicating the determined rate of adjustment to the transmitting station, and in response the transmitting station setting the adjustment rate of its output power (as seen in claims 1 – 3 and 8 of US Patent No. 6,611,690 and claims 1,2,4, and 6 of US Patent 6,556,838; note Applicant's definition of "rate of adjustment" as detailed in the specification of the present application, specifically page 3 lines 16 – 20).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Furthermore, note that the omission of an element(s) and its function(s) in combination is obvious expedient if the remaining function(s) perform(s) the same function(s) as before. See *In re Karlson*, (CCPA) 136 USPQ 184 (1963).

Specification

3. The abstract of the disclosure is objected to because "Figure 4" appears at the bottom. Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
(e) BACKGROUND OF THE INVENTION.
(1) Field of the Invention.
(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(f) BRIEF SUMMARY OF THE INVENTION.
(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(h) DETAILED DESCRIPTION OF THE INVENTION.
(i) CLAIM OR CLAIMS (commencing on a separate sheet).
(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1, 3, 4, 6, 7, 9, 11, and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Naghian (Naghian, World International Property Organization No. WO 00/04649).

Regarding claims 1 and 13, Naghian teaches of a radio communication system and

method having a communication channel between a primary station and a secondary station for transmission of information from one of the primary and secondary stations (the transmitting station) to the other station (the receiving station) (Figures 2, 4, and 5), wherein the transmitting station has means for adjusting its output power at a plurality of different rates (Figure 2 and page 5, lines 29 –35), the receiving station has means for determining, from measurements of characteristics of signals received from the transmitting station, an appropriate rate of adjustment of the output power of the transmitting station and means for communicating said rate of adjustment to the transmitting station (page 5, lines 24 – 28), and the transmitting station has means responsive to communications from the receiving station for setting the adjustment rate of its output power (page 5, lines 24 – 28 and page 8, lines 10 –21).

Regarding claim 3, Naghian teaches of a primary station for use in a radio communication system having a communication channel between the primary station and a secondary station, wherein means are provided for determining, from measurements of characteristics of signals received from the secondary station, an appropriate rate of adjustment of the output power of the secondary station (page 5, lines 24 –28), selected from one of a plurality of rates of adjustment available to the secondary station (Figure 2 and page 5,lines 29 – 35), and for communicating said rate of adjustment to the secondary station (page 5, lines 24 – 28 and page 8, lines 10 –21).

Regarding claim 4, Naghian teaches all the claimed limitations as recited in claim 3. Naghian further teaches of characterised in that the measured characteristic of signals received from the secondary station is the rate of change of received signal to interference ratio (page 6, lines 10 –26).

Regarding claim 6, Naghian teaches all the claimed limitations as recited in claim 3. Naghian further teaches of characterised in that communication to the secondary station of required changes in its rate of adjustment of output power is made after the measured signal characteristic has passed a threshold for a predetermined period (starting page 8,line 32 and ending page 9, line 2).

Regarding claim 7, Naghian teaches all the claimed limitations as recited in claim 3. Naghian further teaches of characterised in that further properties of the received signal are used to verify the rate of change of output power determined from the rate of change of received signal to interference ratio (starting page 8,line 32 and ending page 9, line 2).

Regarding claim 9, Naghian teaches of a secondary station for use in a radio communication system having a communication channel between the secondary station and a primary station (Figures 2, 4, and 5), wherein means are provided for determining, from measurements of characteristics of signals received from the primary station, an appropriate rate of adjustment of the output power of the primary station (Figures 2 and 5 and page 5, lines 29 – 35 and starting page 11,line 30 and ending page 12, line 6), selected from one of a plurality of rates of adjustment available to the primary station, and for communicating said rate of adjustment to the primary station (Figures 2 and 5 and page 5, lines 29 –35 and starting page 11,line 30 and ending page 12, line 6).

Regarding claim 11, Naghian teaches all the claimed limitations as recited in claim 9. Naghian further teaches of characterised in that communication to the primary station of required changes in its rate of adjustment of output power is made after the measured signal characteristic

has passed a threshold for a predetermined period (starting page 8,line 32 and ending page 9, line 2).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 2, 5, 10, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naghian (Naghian, World International Property Organization No. WO 00/04649) as applied to claims 1, 3, and 13 above, and further in view of Kaneda et al. (Kaneda, US Patent No. 6,343,218).

Regarding claims 2 and 14, Naghian teaches all the claimed limitations recited in claims 1 and 13. Naghian further teaches of characterised in that the measured characteristic of signals received from the transmitting station is the rate of change of received signal to interference ratio (page 6, lines 10.–34).

Naghian does not specifically teach of averaged over a predetermined period (though it should be noted that Naghian makes reference to rate of change of power control bits over a time period, as the values are a mean value, as noted on page 6, lines 10 –26 and again on page 8, lines 10 – 21 and further the two are correlated, as per page 8,lines 32 –35).

In a related art dealing with power control systems, Kaneda teaches of received signal to interference ratio averaged over a predetermined period (column 7, lines 22 –29).

It would have been obvious to one skilled in the art at the time of invention to have included into Naghian's averaging system, Kaneda's SIR average, for the purposes of maintaining a certain level of quality in communication (such as during a handover), as taught by Kaneda.

Regarding claim 5, Naghian teaches all the claimed limitations recited in claim 3 Naghian further teaches of characterised in that the measured characteristic of signals received from the secondary station is the rate of change of received signal to interference ratio (page 6, lines 10 –34).

Naghian does not specifically teach of averaged over a predetermined period (though it should be noted that Naghian makes reference to rate of change of power control bits over a time period, as the values are a mean value, as noted on page 6, lines 10 –26 and again on page 8, lines 10 – 21 and further the two are correlated, as per page 8,lines 32 –35).

In a related art dealing with power control systems, Kaneda teaches of received signal to interference ratio averaged over a predetermined period (column 7, lines 22 –29).

It would have been obvious to one skilled in the art at the time of invention to have included into Naghian's averaging system, Kaneda's SIR average, for the purposes of maintaining a certain level of quality in communication (such as during a handover), as taught by Kaneda.

Regarding claim 10, Naghian teaches all the claimed limitations as recited in claim 9. Naghian further teaches of characterised in that the measured characteristic of signals received from the primary station is the rate of change of received signal to interference ratio (page 6, lines 10 –34).

Naghian does not specifically teach of averaged over a predetermined period (though it should be noted that Naghian makes reference to rate of change of power control bits over a time period, as the values are a mean value, as noted on page 6, lines 10 –26 and again on page 8, lines 10 – 21 and further the two are correlated, as per page 8,lines 32 –35).

In a related art dealing with power control systems, Kaneda teaches of received signal to interference ratio averaged over a predetermined period (column 7, lines 22 –29).

It would have been obvious to one skilled in the art at the time of invention to have included into Naghian's averaging system, Kaneda's SIR average, for the purposes of maintaining a certain level of quality in communication (such as during a handover), as taught by Kaneda.

Regarding claim 12, Naghian and Kaneda teach all the claimed limitations as recited in claim 10. Naghian further teaches of characterised in that further properties of the received signal are used to verify the rate of change of output power determined from the rate of change of received signal to interference ratio (starting page 8,line 32 and ending page 9, line 2).

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Naghian (Naghian, World International Property Organization No. WO 00/04649) as applied to claim 3 above, and further in view of Lokio (Lokio, World International Property Organization No. WO 98/09384).

Regarding claim 8, Naghian teaches all the claimed limitations as recited in claim 3. Naghian does not specifically teach of characterised in that means are provided for determining the speed of the secondary station and for adjusting the determined appropriate rate of adjustment of the output power of the secondary station depending in the speed of the secondary station.

In a related art dealing with power control, Lokio teaches of characterised in that means are provided for determining the speed of the secondary station and for adjusting the determined appropriate rate of adjustment of the output power of the secondary station depending in the speed of the secondary station (page 3,lines 27 –34).

It would have been obvious to one skilled in the art at the time of invention to have included into Naghian's power control system, Lokio's step size changes based on speed of the mobile, for the purposes of compensating for fading present in a mobile environment, as taught by Lokio.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Monday – Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay A. Maung can be reached on (703) 308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

Tanmay S Lele
Examiner
Art Unit 2684

NAY MAUNG
SUPERVISORY PATENT EXAMINER

tsl
December 11, 2003